

1  
2  
3  
4  
5  
6  
7 **UNITED STATES DISTRICT COURT**  
8 **CENTRAL DISTRICT OF CALIFORNIA**  
9

10 WILLIAM ROUSER,

11 Plaintiff,

12 v.

13 M. NIETO, *et al.*,

14 Defendants.  
15 \_\_\_\_\_

) Case No. CV 09-8244 DSF (JCG)

) MEMORANDUM AND ORDER  
) DISMISSING FIRST AMENDED  
) COMPLAINT WITH LEAVE TO FILE A  
) SECOND AMENDED COMPLAINT  
) WITHIN THIRTY DAYS  
)

16  
17 **I.**

18 **PROCEEDINGS**

19 On November 23, 2009, plaintiff William Rouser (“Plaintiff”), a California  
20 prisoner proceeding *pro se*, filed a civil rights complaint (“Complaint”) pursuant to 42  
21 U.S.C. § 1983.<sup>1</sup> On December 14, 2009, pursuant to the provisions of the Prison  
22 Litigation Reform Act, the Court screened the Complaint and found it wanting in  
23 several significant respects: (1) Plaintiff failed to state a claim under 42 U.S.C.  
24 § 1983; (2) Plaintiff failed to state a claim based on the processing of his grievances;  
25 (3) all defendants were immune from liability in their official capacities; (4) the factual  
26

27 \_\_\_\_\_  
28 <sup>1</sup> Plaintiff is currently incarcerated at California State Prison, Los Angeles County  
 (“CSP-LA”). (Compl. at 1.)

1 allegations in the Complaint failed to state a claim against two of the defendants; and  
 2 (5) Plaintiff failed to fully exhaust his administrative remedies. (Court's Dec. 14, 2009  
 3 Order at 5-11.) Accordingly, the Court dismissed the Complaint, but granted Plaintiff  
 4 leave to amend. (*Id.* at 12.)

5 On January 14, 2010, Plaintiff filed a First Amended Complaint ("FAC") against  
 6 nine defendants:

7 (1) Warden Haws<sup>2</sup>;

8 (2) Matthew Cate, Secretary of the California Department of Corrections and  
 9 Rehabilitation ("Secretary Cate");

10 (3) E. Goodloe, mail room supervisor at CSP-LA ("Supervisor Goodloe");

11 (4) John Doe, appeals coordinator at CSP-LA ("Appeals Coordinator");

12 (5) John Doe, assignment lieutenant at CSP-LA ("Assignment Lieutenant");

13 (6) P. Boetsch, law librarian at CSP-LA ("Librarian Boetsch");

14 (7) M. Nieto, correctional officer at CSP-LA ("Officer Nieto");

15 (8) T. Phan, correctional officer at CSP-LA ("Officer Phan"); and

16 (9) Captain Fortson, captain at CSP-LA. (FAC at 2-4.)

17 Each of the defendants is sued in his or her individual capacity only. (*Id.*)

18 As detailed below, the FAC continues to suffer from a number of infirmities,  
 19 and again merits dismissal. The Court shall afford Plaintiff leave to amend, but  
 20 Plaintiff is cautioned that, if he fails to comply with the requirements set forth in both  
 21 the Court's earlier Order of December 14, 2009 and now this Order, the Court may  
 22 recommend that this action be dismissed with prejudice.

## 23 II.

### 24 ALLEGATIONS OF THE COMPLAINT

25 In a prolix and obscure manner, Plaintiff attempts to set out three claims for

---

26  
 27 <sup>2</sup> Warden Haws is no longer the warden of CSP-LA. However, Plaintiff alleges that  
 28 Warden Haws was the warden of CSP-LA at all times relevant to the FAC. (FAC at 2.)

1 relief based on five separate incidents or series of incidents that allegedly occurred at  
2 CSP-LA. For ease of reference, each of these incidents is summarized below.

3 A. Denial of Access to Law Library

4 Plaintiff contends that Librarian Boetsch denied him access to the law library at  
5 CSP-LA. (FAC at 4.) Plaintiff alleges that on August 7, 2009, Plaintiff was  
6 transferred from Pleasant Valley State Prison to CSP-LA. (*Id.*) At that time, Plaintiff  
7 was proceeding *pro se* in six court cases and retained “PLU” (preferred legal usage)  
8 status because he had “legal deadlines” within thirty days. (*Id.*)

9 Plaintiff alleges that he sent requests to Librarian Boetsch for permission to use  
10 the library, but Boetsch never responded. (FAC at 4.) Plaintiff further claims that he  
11 “was denied law library access two and three weeks at a time,” and when he was  
12 granted permission, “it was never more th[a]n two hours a week.” (*Id.*) Plaintiff states  
13 that he submitted three “602” grievances in response to the denial of library access.  
14 (*Id.*) The number “602” refers to a specific California Department of Corrections form  
15 used by inmates to lodge grievances.

16 B. Denial of Employment

17 On August 19, 2009, Plaintiff alleges that he went to “Classification” to apply  
18 for a job. (FAC at 4.) Plaintiff was placed on a “workers waiting list for support  
19 services and a clerk position[.]” (*Id.* at 4-5.) However, Plaintiff contends that the  
20 Assignment Lieutenant “refused to give Plaintiff a job[.]” and instead awarded jobs to  
21 other individuals who should not have been hired before Plaintiff – in Plaintiff’s  
22 opinion. (*Id.*) In protest, Plaintiff states that he filed four grievances and two “inmate  
23 request slips[.]” (*Id.*)

24 C. Removal From the Inmate Advisory Committee

25 Plaintiff alleges that Warden Haws and Captain Fortson conspired to deny  
26 Plaintiff’s equal protection and due process rights by “removing Plaintiff from the”  
27 Inmate Advisory Committee (“IAC”), even though he was “u[na]nimously” voted onto  
28 the IAC by “every eligible inmate.” (FAC at 5.) Plaintiff claims that Warden Haws

1 and Captain Fortson then placed other inmates onto the IAC “who had not been voted  
2 in by the inmate population[.]” (*Id.*) Plaintiff avers that he sent separate grievances  
3 regarding his removal from the IAC to Captian Fortson, Warden Haws, and the  
4 Appeals Coordinator. (*Id.*)

5 D. Mishandling of Plaintiff’s Legal Mail

6 Plaintiff contends that his legal mail was improperly opened and delayed by the  
7 “mailroom” and/or “defendants[.]” (FAC at 5, 9.) Plaintiff alleges the following  
8 instances of misconduct: (1) a letter from his attorney at the “Jones Day Law Firm[.]”  
9 which was protected by the attorney client privilege, was opened and held “for weeks”  
10 before being “sent ... to plaintiff through regular mail”; (2) an extension of time from  
11 Sacramento Superior Court was opened and sent to Plaintiff through “regular” mail;  
12 (3) Plaintiff missed his deadline to file a “[p]etition for review” because he did not  
13 receive the California Court of Appeal’s “denial of writ” until after the deadline had  
14 passed; and (4) Plaintiff missed his deadline to file objections to a “Deposition  
15 Subpoena” because he did not receive “a letter” until after the objections deadline had  
16 passed. (*Id.* at 5-6.)

17 Plaintiff contends that these incidents interfered with his “ability to litigate and  
18 access the courts.” (FAC at 6.) Plaintiff claims that when he filed a grievance  
19 concerning “this issue[,] Plaintiff’s legal mail was ... held longer and longer and given  
20 to him ... opened.” (*Id.* at 5.)

21 E. Attempt to Incite Other Inmates Against Plaintiff

22 Plaintiff alleges that Officer Nieto purposely and maliciously took Plaintiff’s  
23 “grievance out of the mail” and denied Plaintiff’s ability to file it. (FAC at 6.)  
24 Plaintiff further alleges that Officer Nieto then conspired with Officer Phan “to incite  
25 inmates against” Plaintiff by “infern[ing] ... that he was ... snitching[.]” (*Id.*) Plaintiff  
26 avers that this was meant to “intimidate and threaten” Plaintiff from filing grievances.  
27 (*Id.*)  
28

## F. Plaintiff's Alleged Constitutional Claims

Based on the above incidents, Plaintiff purports to allege three claims for relief:

First, Plaintiff alleges a violation of the First Amendment and his “Right to Petition the Government for a Redress of Grievance[.]” (FAC at 7.)

Second, Plaintiff alleges a violation of the Eighth Amendment’s prohibition against cruel and unusual punishment based upon Officers Nieto’s and Phan’s “attempt[s] ... to incite[] inmates to attack Plaintiff[.]” (FAC at 8.)

Third, Plaintiff alleges violations of due process and equal protection based upon: (1) the mishandling of Plaintiff's legal mail; (2) the denial of employment to Plaintiff; (3) Plaintiff's removal from the IAC; and (4) "defendants" refusal to "answer or return" Plaintiff's 602 grievances. (FAC at 8-9.)

### III.

## LEGAL STANDARDS

The Prison Litigation Reform Act obligates the Court to review complaints filed by all persons proceeding *in forma pauperis*, and by those, like Plaintiff, who are “incarcerated or detained in any facility [and] accused of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms or conditions of parole, probation, pretrial release, or diversionary program.” *See* 28 U.S.C. §§ 1915(e)(2)-(h) and 1915A. Under these provisions, the Court must *sua sponte* dismiss any prisoner civil rights action and all other *in forma pauperis* complaints, or any portions thereof, which are frivolous or malicious, fail to state a claim, or seek damages from defendants who are immune. *Id.*; *see also Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (*en banc*). Dismissal for failure to state a claim “can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory.” *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988, *as amended* Feb. 27, 1990 and May 11, 1990).

Under Federal Rule of Civil Procedure 8, a complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ.

P. 8(a). While Rule 8 does not require “detailed factual allegations,” a complaint must provide “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). “Factual allegations must be enough to raise a right to relief above the speculative level.” *Id.* Thus, a complaint must contain “enough facts to state a claim to relief that is plausible on its face.” *Id.* at 570. A claim has facial plausibility when the plaintiff pleads enough factual content to allow a court “to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009).

To state a claim under 42 U.S.C. § 1983, Plaintiff must allege that: (1) the conduct he complains of was committed by a person acting under color of state law; and (2) that the conduct violated a right secured by the Constitution or laws of the United States. *Humphries v. County of Los Angeles*, 554 F.3d 1170, 1184 (9th Cir. 2009, *as amended* Jan. 15, 2009 and Jan. 30, 2009), *cert. granted in part*, 130 S.Ct. 1501 (2010) (citing *West v. Atkins*, 487 U.S. 42, 48 (1988)).

#### IV.

#### DISCUSSION

##### A. Plaintiff Fails to State a Claim Against Secretary Cate, Supervisor Goodloe, and the Appeals Coordinator

Although the Complaint names Secretary Cate, Supervisor Goodloe, and the Appeals Coordinator as defendants, Plaintiff fails to allege any specific conduct or personal involvement by these defendants in the incidents giving rise to Plaintiff’s constitutional claims. “In order for a person acting under color of state law to be liable under section 1983[,] there must be a showing of personal participation in the alleged rights deprivation: there is no respondeat superior liability under section 1983.” *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002); *see also Ewing v. City of Stockton*, 588 F.3d 1218, 1235 (9th Cir. 2009).

At most, the FAC’s allegations suggest that these defendants acted as

supervisors and/or overseers of other individuals who may have caused Plaintiff's alleged injuries. But such allegations are insufficient to state a claim under § 1983. Plaintiff must allege that each defendant was personally involved in the alleged deprivation of a constitutional right. *Jones*, 297 F.3d at 934; *see also Ewing*, 588 F.3d at 1235; *Redman v. County of San Diego*, 942 F.2d 1435, 1446 (9th Cir. 1991) (*en banc*), *cert denied*, 502 U.S. 1074 (1992) (supervisor only liable under § 1983 if (1) he or she was personally involved in constitutional deprivation, or (2) a sufficient causal connection exists "between the supervisor's wrongful conduct and the constitutional violation"). Accordingly, the Court finds that Plaintiff's claims against Secretary Cate, Supervisor Goodloe, and the Appeals Coordinator must be dismissed for failure to state a claim upon which relief could be granted. *See* 28 U.S.C. §§ 1915(e)(2)(B) and 1915A.

B. Plaintiff Fails to State a Due Process or Equal Protection Claim Based Upon the Denial of Employment

Plaintiff claims that his due process and equal protection rights were violated when the Assignment Lieutenant denied Plaintiff a job, and instead provided jobs to other individuals who should not have been hired before Plaintiff. (FAC at 4-5, 8-9.)

However, the "requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property." *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 569 (1972); *Coakley v. Murphy*, 884 F.2d 1218, 1220 (9th Cir. 1989) ("A due process claim is cognizable only if there is a recognized liberty or property interest at stake.").

And it is well established that a prisoner's "expectation of keeping [or obtaining] a particular prison job" does not implicate any "property" or "liberty" interest that is "entitled to protection under the due process clause." *See Bryan v. Werner*, 516 F.2d 233, 240 (3d Cir. 1975); *see also Coakley*, 884 F.2d at 1220-1221 (prisoner has no liberty or property interest to continue in a work release program); *McIntyre v. Bayer*, 72 Fed.Appx. 674, 674 (9th Cir. 2003) ("prisoners do not have a constitutional right to



1 prison employment[ ]”); *Flittie v. Solem*, 827 F.2d 276, 279 (8th Cir. 1987) (*per*  
 2 *curiam*) (“inmates have no constitutional right to be assigned to a particular job[ ]”);  
 3 *Ingram v. Papalia*, 804 F.2d 595, 596 (10th Cir. 1986) (*per curiam*) (“[t]he  
 4 Constitution does not create a property or liberty interest in prison employment[ ]”);  
 5 *Lancaster v. Carey*, 2008 WL 3272081, at \*2 (E.D. Cal. 2008) (“[i]t is ... well  
 6 established throughout the federal circuit courts that a prisoner’s expectation of  
 7 keeping a specific prison job, or any job, does not implicate a property or liberty  
 8 interest under the Fourteenth Amendment[ ]”); *Gray v. Hernandez*, 651 F.Supp.2d  
 9 1167, 1186 (S.D. Cal. 2009) (“The due process clause of the Fourteenth Amendment  
 10 does not create a liberty or property interest in prison employment.”). Accordingly,  
 11 Plaintiff cannot state a due process claim based upon the denial of employment.

12 Plaintiff’s equal protection claim also lacks merit. “The Equal Protection Clause  
 13 of the Fourteenth Amendment commands that no State shall ‘deny to any person  
 14 within its jurisdiction the equal protection of the laws,’ which is essentially a direction  
 15 that all persons similarly situated should be treated alike.” *City of Cleburne v.*  
 16 *Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985) (citation omitted). To establish an  
 17 equal protection claim, a plaintiff must plead facts showing that a defendant  
 18 intentionally discriminated against the plaintiff based on his or her membership in a  
 19 protected class, or that similarly situated individuals were intentionally treated  
 20 differently without a rational basis for the difference in treatment. *See Serrano v.*  
 21 *Francis*, 345 F.3d 1071, 1082 (9th Cir. 2003), *cert. denied*, 543 U.S. 825 (2004); *see*  
 22 *also Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000) (*per curiam*). A  
 23 plaintiff *must* allege facts that establish intentional unlawful discrimination or facts  
 24 “that are at least susceptible of an inference of discriminatory intent.” *Byrd v.*  
 25 *Maricopa County Sheriff’s Dep’t*, 565 F.3d 1205, 1212 (9th Cir. 2009) (internal  
 26 quotation marks and citation omitted).

27 Here, Plaintiff does not allege that the Assignment Lieutenant denied him a job  
 28 based on his membership in a protected class, or that he was treated differently than



1 other *similarly situated individuals*. Plaintiff also fails to allege facts that establish that  
 2 the Assignment Lieutenant intentionally discriminated against Plaintiff. Plaintiff  
 3 simply makes no factual allegations of racial, gender, religious, or other class-based  
 4 discrimination. Accordingly, the Court finds that Plaintiff has failed to plead enough  
 5 factual content to allow the Court “to draw the reasonable inference that” Plaintiff’s  
 6 equal protection rights were violated. *See Iqbal*, 129 S.Ct. at 1949.

7 In light of the above, the Court dismisses Plaintiff’s due process and equal  
 8 protection claims, based upon the denial of employment, for failure to state a claim  
 9 upon which relief could be granted. *See* 28 U.S.C. §§ 1915(e)(2)(B) and 1915A.  
 10 Furthermore, the Court dismisses the Assignment Lieutenant from this action because  
 11 the only allegations against him arise out of this claim.

12 C. Plaintiff Fails to State a Due Process or Equal Protection Claim Based  
 13 Upon his Removal from the Inmate Advisory Committee

14 Plaintiff alleges that Captain Fortson and Warden Haws conspired to deny  
 15 Plaintiff’s due process and equal protection rights by removing Plaintiff from the IAC,  
 16 “even though he was voted [in] u[na]nimously by every eligible inmate[.]” (FAC at 5.)  
 17 Captain Fortson and Warden Haws then allegedly placed other inmates onto the IAC  
 18 that were not voted in by the inmate population. (*Id.*)

19 First, Plaintiff fails to state a due process claim based on his removal from the  
 20 IAC. “The requirements of procedural due process apply only to the deprivation of  
 21 interests encompassed by the Fourteenth Amendment’s protection of liberty and  
 22 property.” *Board of Regents*, 408 U.S. at 569. Under the Supreme Court’s decision in  
 23 *Sandin v. Conner*, “a prisoner can show a liberty interest under the Due Process Clause  
 24 of the Fourteenth Amendment only if he alleges a change in confinement that imposes  
 25 an ‘atypical and significant hardship ... in relation to the ordinary incidents of prison  
 26 life.’” *Wilson v. Baker*, 2010 WL 2555209, at \* 10 (E.D. Cal. 2010) (citing *Sandin v.*  
 27 *Conner*, 515 U.S. 472, 483-84 (1995)).

28 The Court fails to see how Plaintiff’s removal from the IAC could possibly meet

1 the *Sandin* standard for establishing a due process liberty interest. The Court finds that  
 2 membership on the IAC is not an ordinary incident of prison life, such that removal  
 3 from the IAC would constitute an atypical or significant prison hardship. *See Cooper*  
 4 *v. Garcia*, 55 F.Supp.2d 1090, 1098 (S.D. Cal. 1999) (a prisoner does not have a  
 5 liberty interest in a family visitation program “because such a program is not an  
 6 ‘ordinary incident of prison life[.]’”) (citation omitted).

7 Second, Plaintiff also fails to state an equal protection claim based on his  
 8 removal from the IAC. Plaintiff has not alleged that his removal from the IAC was  
 9 based on his membership in a protected class, or that he was treated differently than  
 10 other *similarly situated individuals*. *See Serrano*, 345 F.3d at 1082; *see also Village of*  
 11 *Willowbrook*, 528 U.S. at 564. Plaintiff has also not alleged that Captain Fortson and  
 12 Warden Haws intentionally discriminated against Plaintiff in removing him from the  
 13 IAC. *See Byrd*, 565 F.3d at 1212.

14 Consequently, the Court dismisses Plaintiff’s due process and equal protection  
 15 claims, based upon Plaintiff’s removal from the IAC, for failure to state a claim upon  
 16 which relief could be granted. *See* 28 U.S.C. §§ 1915(e)(2)(B) and 1915A. The Court  
 17 also dismisses Warden Haws and Captain Fortson from this action, since the only  
 18 allegations against them arise out of these claims.

19 D. Plaintiff Fails to State a Due Process or Equal Protection Claim Based  
 20 Upon Defendants’ Refusal to Answer or Return Plaintiff’s 602  
 21 Grievances

22 Plaintiff cannot state a due process claim based upon defendants’ handling of his  
 23 grievances because there is no constitutional right to a prison grievance procedure. *See*  
 24 *Mann v. Adams*, 855 F.2d 639, 640 (9th Cir.), *cert. denied*, 488 U.S. 898 (1988)  
 25 (“There is no legitimate claim of entitlement to a grievance procedure.”); *Wise v.*  
 26 *Washington State Dep’t of Corrections*, 244 Fed.Appx. 106, 108 (9th Cir. 2007), *cert.*  
 27 *denied*, 552 U.S. 1282 (2008) (“inmate has no due process rights regarding the proper  
 28 handling of grievances[.]”); *Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003), *cert.*

1 *denied*, 541 U.S. 1063 (2004) (“inmates lack a separate constitutional entitlement to a  
 2 specific prison grievance procedure[.]”); *Buckley v. Barlow*, 997 F.2d 494, 495 (8th Cir.  
 3 1993) (prison official’s failure to process grievances, without more, is not actionable  
 4 under § 1983).

5 Plaintiff also fails to state an equal protection claim because he fails to allege  
 6 that: (1) the mishandling of his grievances was based upon Plaintiff’s membership in a  
 7 protected class; or (2) his grievances were treated differently than those of other  
 8 *similarly situated individuals*. See *Serrano*, 345 F.3d at 1082; see also *Village of*  
 9 *Willowbrook*, 528 U.S. at 564.

10 Accordingly, the Court dismisses Plaintiff’s due process and equal protection  
 11 claims, based upon the alleged mishandling of Plaintiff’s grievances, for failure to state  
 12 a claim upon which relief could be granted. See 28 U.S.C. §§ 1915(e)(2)(B) and  
 13 1915A.

14 E. Plaintiff Fails to State an Equal Protection or Due Process Claim Based  
 15 Upon the Mishandling of Plaintiff’s Legal Mail

16 Plaintiff purports to state an equal protection claim based upon the  
 17 “mailroom[’s]” delay in routing Plaintiff’s legal mail to the Plaintiff. (FAC at 8-9.)  
 18 However, the FAC is devoid of any equal protection allegations relating to Plaintiff’s  
 19 legal mail. Plaintiff does not allege that: (1) the “mailroom” delayed Plaintiff’s legal  
 20 mail because of Plaintiff’s membership in a protected class; or (2) the “mailroom”  
 21 treated Plaintiff’s legal mail differently from mail of other *similarly situated*  
 22 *individuals*. See *Serrano*, 345 F.3d at 1082; see also *Village of Willowbrook*, 528 U.S.  
 23 at 564. Plaintiff also fails to allege any facts which would indicate that the “mailroom”  
 24 intentionally discriminated against Plaintiff in the handling of his legal mail. *Byrd*,  
 25 565 F.3d at 1212. As such, Plaintiff has failed to allege sufficient facts to plead an  
 26 equal protection claim.

27 The Court also dismisses Plaintiff’s due process claim because the FAC fails to  
 28 specifically identify any defendant who was personally involved in the alleged

1 mishandling of Plaintiff's legal mail. At most, the FAC identifies the "mailroom" or  
 2 "defendants" as the alleged perpetrators. (*See* FAC at 5-6, 8-9.) The Court finds that  
 3 such allegations are not adequate to allow the Court "to draw the reasonable inference  
 4 that [any] defendant is liable for the misconduct alleged." *Iqbal*, 129 S.Ct. at 1949.

5 Consequently, the Court dismisses Plaintiff's due process and equal protection  
 6 claims, based upon the alleged mishandling of Plaintiff's legal mail, for failure to state  
 7 a claim upon which relief could be granted. *See* 28 U.S.C. §§ 1915(e)(2)(B) and  
 8 1915A.

9 F. Plaintiff Fails to State a Claim Against Librarian Boetsch

10 Plaintiff specifically names Librarian Boetsch as a defendant in the "PARTIES"  
 11 section of the FAC, and further sets out facts in the "FACTS" section of the FAC in an  
 12 apparent attempt to set out an "Access to the Courts" claim. (FAC at 3, 5-6.) But  
 13 inexplicably, Plaintiff omits any specific mention or reference to his "law library"  
 14 claim in any of his claims for relief. Nor does Plaintiff allege anywhere in the FAC  
 15 that he is claiming a denial of "Access to the Courts" based upon Librarian Boetsch's  
 16 alleged misconduct. Accordingly, the Court dismisses Plaintiff's claims against  
 17 Librarian Boetsch, to the extent any have been plead, for failure to state a claim upon  
 18 which relief could be granted. *See* 28 U.S.C. §§ 1915(e)(2)(B) and 1915A.

19 If Plaintiff desires to amend the FAC to include an "Access to the Courts" claim,  
 20 Plaintiff must allege, in addition to what is already alleged in the FAC, that he suffered  
 21 an actual injury as a result of the alleged denial of access to the law library. In other  
 22 words, Plaintiff must show that Librarian Boetsch's conduct caused Plaintiff "actual  
 23 prejudice with respect to contemplated or existing litigation, such as the inability to  
 24 meet a filing deadline or present a claim." *Lewis v. Casey*, 518 U.S. 343, 349 (1996)  
 25 (internal quotation marks and citation omitted).

26 V.

27 LEAVE TO AMEND

28 The Court must construe "pro se pleadings ... liberally ..., particularly where

1 civil rights claims are involved.” *Balistreri*, 901 F.2d at 699. But “a liberal  
 2 interpretation of a civil rights complaint may not supply essential elements of the claim  
 3 that were not initially pled.” *Ivey v. Board of Regents of Univ. of Alaska*, 673 F.2d  
 4 266, 268 (9th Cir. 1982). Accordingly, *pro se* litigants must be given leave to amend  
 5 unless it is absolutely clear that the deficiencies in a complaint cannot be cured. *Lucas*  
 6 *v. Dep’t of Corr.*, 66 F.3d 245, 248 (9th Cir. 1995) (*per curiam*). As the Court is  
 7 unable to determine whether amendment to the FAC would be futile, leave to amend is  
 8 granted in an abundance of caution.

9 By August 9, 2010, Plaintiff may submit a Second Amended Complaint to cure  
 10 the deficiencies discussed above. The Clerk of Court will mail Plaintiff a  
 11 court-approved form to use for filing the Second Amended Complaint. **If Plaintiff**  
 12 **fails to use the court-approved form, the Court may strike the Second Amended**  
 13 **Complaint and dismiss this action without further notice.**

14 **If Plaintiff chooses to file a Second Amended Complaint, it must comply**  
 15 **with Federal Rule of Civil Procedure 8, and contain short, plain statements**  
 16 **explaining: (1) the constitutional right Plaintiff believes was violated; (2) the**  
 17 **name of the defendant who violated that right; (3) exactly what that defendant**  
 18 **did or failed to do; (4) how the action or inaction of that defendant is connected to**  
 19 **the violation of Plaintiff’s constitutional right; and (5) what specific injury**  
 20 **Plaintiff suffered because of that defendant’s conduct.** *See* 42 U.S.C. § 1983; Fed.  
 21 R. Civ. P. 8; *see also Humphries*, 554 F.3d at 1184; *Rizzo v. Goode*, 423 U.S. 362,  
 22 371-72 (1976). If Plaintiff fails to affirmatively link the conduct of the defendant with  
 23 the specific injury suffered by Plaintiff, the allegation against that defendant will be  
 24 dismissed for failure to state a claim. Conclusory allegations that a defendant has  
 25 violated a constitutional right are not acceptable and will be dismissed.

26 Plaintiff must clearly designate on the face of the document that it is the  
 27 “Second Amended Complaint,” and it must be retyped or rewritten in its entirety on  
 28 the court-approved form. The Second Amended Complaint may not incorporate any

1 part of the FAC or original Complaint by reference.

2 Any amended complaint supercedes preceding complaints. *Ferdik v. Bonzelet*,  
 3 963 F.2d 1258, 1262 (9th Cir.), *cert. denied*, 506 U.S. 915 (1992). After amendment,  
 4 the Court will treat the FAC and original Complaint as nonexistent. *Id.* Any claim that  
 5 was raised in the FAC is waived if it is not raised again in the Second Amended  
 6 Complaint. *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987).

## 7 VI.

### 8 ORDER

9 1. Plaintiff's claims against Warden Haws, Matthew Cate, E. Goodloe,  
 10 Appeals Coordinator (John Doe), Assignment Lieutenant (John Doe), P. Boetsch, and  
 11 Captain Fortson are **DISMISSED** with leave to amend, pursuant to 28 U.S.C.  
 12 §§ 1915(e)(2) and 1915A, for failure to state a claim on which relief may be granted.

13 2. All of Plaintiff's due process and equal protection claims, contained in  
 14 Plaintiff's "THIRD CLAIM FOR RELIEF" in the FAC, are **DISMISSED** with leave  
 15 to amend, pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A, for failure to state a claim  
 16 on which relief may be granted.

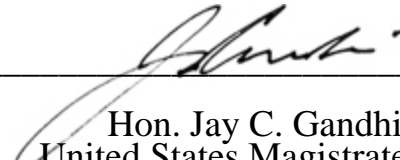
17 3. Plaintiff is given leave to amend and is **GRANTED** up to and including  
 18 August 9, 2010, to file a Second Amended Complaint curing the deficiencies discussed  
 19 above. Plaintiff is **NOTIFIED** that the Second Amended Complaint may not add new  
 20 claims or new defendants that were not involved in the conduct, transactions, or  
 21 occurrences set forth in the FAC. Fed. R. Civ. P. 15(c). The Second Amended  
 22 Complaint shall be retyped or rewritten so that it is complete in itself without reference  
 23 to the FAC, and shall be submitted on the court-approved form. After amendment, the  
 24 Court will treat the FAC as nonexistent.

25 4. If Plaintiff fails to file a Second Amended Complaint by August 9, 2010  
 26 and/or such Second Amended Complaint fails to comply with the requirements set  
 27 forth in this Memorandum and Order, the Court may recommend that this action, or  
 28 portions thereof, be dismissed with prejudice.

1           5.     The Clerk of Court is **DIRECTED** to send Plaintiff a prisoner civil rights  
2 complaint form so that he may amend the FAC.

3           IT IS SO ORDERED.

4  
5 DATED: July 7, 2010

6  
7   
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
Hon. Jay C. Gandhi  
United States Magistrate Judge